IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

WP(C).No. 23496 of 2004(V)

PETITIONER:

RADHAKRISHNAN NAIR, ASSISTANT
DIRECTOR/QUALITY CONTROL OFFICER,
QUALITY CONTROL OFFICE, DIARY DEVELOPMENT
DEPARTMENT, CIVIL STATION, KAKKANADU.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

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1. STATE OF KERALA, REP. BY
SECRETARY TO FINANCE, FINANCE DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR, DIARY DEVELOPMENT
DEPARTMENT, TRIVANDRUM.

3. OFFICE OF THE ACCOUNTANT GENERAL,
AUDIT AND ACCOUNTS DEPARTMENT,
TRIVANDRUM.

4. SECRETARY TO GOVERNMENT,
AGRICULTURER/DIARY DEVELOPMENT DEPARTMENT,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No.23496/2004 APPENDIX

Ext.P1: True Photostat copy of the order dated 24-5-1994 issued by the 2nd respondent g higher grade benefits to the petitioner

Ext.P2: True photocopy of the order issued by 4th respondent promoting the petitioner as Assistant Dairy Director dated 16-12-1999

Ext.P3: True photocopy of the order issued by 3rd respondent dated 25-9-2000 fixing the increment date by 1-4-2003

Ext.P4: True photocopy of the order issued by Government dated 31-12-2002 vide No.G.O (P) 804/(129)/Fin

Ext.P5: True photocopy of the representation submitted by the petitioner before the 2nd respondent dated 31-3-2002

Ext.P6: True photocopy of representation submitted by petitioner dated 8-7-2003

Ext.P7: True photocopy of the order issued by 2ns respondent dated 13-1-2003 giving higher grade.

Ext.P8: True copy of the order issued by 2nd respondent declaring probation of the petitioners dated 8-4-2003

Ext.P9: True copy of the order issued by 4th respondent rejecting the request of the petitioner dated 16-3-2004.

T.R. Ramachandran Nair, J.

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W.P.(C).NO.23496 of 2004-V

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Dated this the 21st day of February, 2007

JUDGMENT

The petitioner retired from service as Asst. Director/Quality Control Officer in the Diary Development Department. His retirement was subsequent to the filing of the writ petition. Brief facts of the case are the following:

2. The petitioner entered service as Diary Extension Officer on 13.10.1983 and on completion of 10 years of service, higher grade benefit was granted to the petitioner with effect from 9.9.1993 as seen from Ext.P1. He was promoted as Asst. Diary Director/Quality Control Officer as per Ext.P2 order of the second respondent dated 16.12.1999.

3. It appears that the petitioner requested to fix his date of increment as per letter dated 1.9.2000 and he received a reply, Ext.P3 from the third respondent's office informing that as his pay has been regulated in the scale of pay of Rs.7450-11475, refixation is not admissible and his increment will become due on 1.4.2001. The petitioner submits that in view of the above, he opted 1.4.2002 as the date for the next increment since the same was

beneficial on completion of 18 years of service on 8.9.2001.

4. Petitioner has been granted higher grade on completion of 18 years of service by Ext.P7. This order is dated 13.1.2003. As per the said order, he has been granted higher grade in the scale of Rs.7800-12975 from 1.4.2002, the date on which he has completed 18 years of service. This higher grade has been granted based on G.O.(P) No.3000/98/Fin. dated 25.11.1998.

5. Meanwhile, the Government issued an order Ext.P4 regarding the mode of refixation of pay on regular promotion to higher scales from time bound higher grade posts and sanctioning of next increment. The Government therein ordered that employees who were promoted to regular cadre posts on higher scales from time bound higher grade posts as per G.O. (P) No.3000/98/Fin. dated 25.11.1998 will be eligible for next increment in the promotion post on the date of normal increment in the time bound higher grade posts in relaxation of rules. Claiming the benefit of the Govt. Order, the petitioner filed Ext.P5 representation before respondents 2 and 3. The petitioner wanted to have a change of option to 9.9.2001 and to sanction the scale of pay of Rs.7800-12975/- with effect from 9.9.2001. In fact, this is dated 31.3.2003. Thereafter, he submitted a further representation produced as Ext.P6 for the same relief. Ext.P8 is the order by

which his probation has been declared in the post of Asst. Director with effect from 10.4.2001.

6. As per Ext.P9 Government communicated its decision to the second respondent on the request of the petitioner. The Government has taken the view that the petitioner was granted higher grade on completion of 18 years from 1.4.2002 and the grade option is final. Therefore, his request to have a re-option is not liable to be considered at all. Further, the Government also stated that Ext.P4 is applicable for persons who happened to be promoted from the time bound higher grade posts to regular cadre posts and the petitioner's case is not covered by the same. The petitioner seeks to quash Ext.P9 notice in this writ petition.

7. Heard counsel for the petitioner Shri P.P. Jacob, and the Govt. Pleader.

8. Petitioner's counsel strenuously argued that Ext.P9 order is not one passed after considering the effect of Ext.P4. It is further argued that Ext.P4 confers a benefit on employees like the petitioner and therefore, he cannot be denied the benefit of Ext.P4.

9. On behalf of the respondents, relying upon the counter affidavit, the Govt. Pleader argued that the petitioner was granted 18 years time bound higher grade with effect from 1.4.2002 as already opted by him and

accordingly, his pay was fixed at Rs.8,975/- with effect from 1.4.2002. It is stated that option once exercised for time bound higher grade promotion, shall be treated as final and re-option is admissible only in the case of retrospective regular promotion. It is further pointed out that Ext.P4 Govt. Order does not permit to allow the request for re-option.

10. I find that the argument of the petitioner relying upon Ext.P4 is liable to be rejected. Ext.P4 does not permit any request for re-option. As far as the option given by the petitioner is concerned, the date 1.4.2002 is one opted by him for getting the time bound higher grade benefits on completion of 18 years. It is a case where the petitioner was promoted admittedly by Ext.P2 order and the time bound higher grade on completion of 18 years was granted after his promotion as per Ext.P7 order dated 13.1.2003. Petitioner has no dispute that the date 1.4.2002 is one opted by him. None of the orders relied upon enable a re-option to be submitted by the officer concerned. A reading of Ext.P4 will show that that is applicable to employees who are promoted to regular cadre posts on higher scales from time bound higher grade posts. Here, the petitioner was initially promoted before the time bound higher grade for 18 years was granted. The petitioner's case is not covered by Ext.P4 and hence he is not entitled to submit a re-option as contended by him.

11. The option once exercised for time bound higher grade promotion is treated as final and there are no Govt. Orders permitting change of option and Ext.P4 is not one allowing the request for re-option. As far as re-option is concerned, it is only a concession given to the Government employees and it cannot be sought for as a matter of right and when the Government has treated re-option once exercised as final, there is no provision to allow the request to have a separate date of option.

In view of the above aspects, the writ petition is without any merit and the same is dismissed, no costs.

(T.R. Ramachandran Nair, Judge.)

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